

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PETITION OF MAXIMUM INVESTMENTS, LLC))
FOR AN ADJUSTED STANDARD FROM))
35 ILL INOIS ADMINISTRATIVE CODE))
740.210(A)3 FOR THE STONEY CREEK))
LANDFILL IN PALOS HILLS, IL))

AS-09-02

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STATE OF ILLINOIS
Pollution Control Board

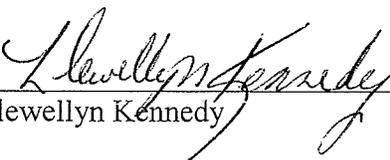
Certificate of Service

I, the undersigned, certify that I have served the attached Reply Brief re Adjusted Standard, by depositing in the US Postal Service first class postage prepaid on May 14, 2009, upon the following persons:

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REPLY BRIEF RE ADJUSTED STANDARD

The Illinois EPA argues that the Illinois Pollution Control Board does not have the authority to modify a statutory requirement for enrolling the subject property in the Site Remediation Program. Petitioner, however, has not requested the board to modify the statutory requirement in question. Instead, as Petitioner points out in his Brief, the the statute permits a party to act “in lieu of the owner” under appropriate circumstances and argues that Petitioner meets this undefined qualification. It is clearly within the Board’s authority to interpret the statute where the statute has ambiguous language.

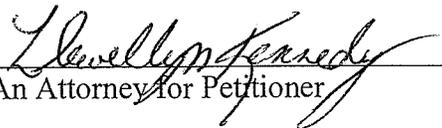
The statute differentiates acting in lieu of the owner from acting on behalf of the owner. Clearly, acting on behalf of the owner would mean that the party executing the agreement is a corporate officer, attorney in fact or has some written delegation of authority to act. Acting in lieu of the owner must mean something else. Petitioner believes the current circumstance is a proper example of acting in lieu of the owner. First, the property is abandoned so there is no owner. Second, Petitioner is a lien holder with no lien holders having higher priority.

The Illinois EPA has not argued that Petitioner does not have the authority to act in lieu of the owner or that Petitioner’s status as lienholder is insufficient to enable it to act in this regard.

Furthermore, Petitioner provides an alternate remedy that the Board define the review and evaluation services to be performed under 415 ILCS 5/22.2b.e. The Illinois EPA has not argued that this alternate remedy is inappropriate or outside the Board’s scope of authority. Such evaluation services could be identical in all substantive respects to the Site Remediation Program and require that the prospective purchaser formally enroll the property in the Site Remediation Program once taking title but specifically allow for lienholders to apply where the property is abandoned or the owner is unable to act. There are many circumstances where such procedure might be necessary; the current circumstance of a tax lien on a property last owned by a deceased party being only one. A financial institution could hold a lien on property owned by a bankrupt entity that elects in bankruptcy court to abandon its’ interest and liquidates without transferring title. The Board should have a procedure in place to accommodate these situations.

The Illinois EPA's discussion of the practical limitations of obtaining relief under Section 22.2b is jumping ahead of the issue at hand. The purpose of the instant Petition is to establish a mechanism for Petitioner to apply for this relief. Petitioner fully understands that application is no guaranty the relief will be granted.

Respectfully submitted,


An Attorney for Petitioner

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